IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4850 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAGANLAL P TAHKKAR - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR KM PATEL FOR MR SK JHAVERI for Petitioner.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/01/2006

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 31st July 1986 passed by the Collector, Kachchh as upheld by the order dated 10/13.2.1989 passed by the Additional Chief Secretary

(Appeals), Revenue Department, Government of Gujarat.

2. It is not necessary to record in detail the entire background leading to the present petition. Suffice it to say that the petitioner was alloted Government land upon payment of market price by the Collector by his order dated 28.10.76. By the said order, upon payment of Rs.31,111.11 ps. plot bearing survey No.894 paike of Bhuj admeasuring 6222.2 sq. yards was alloted to the petitioners for setting up of an oil mill. The grant of the land was subject to certain terms and conditions. One of the conditions was that the allotee should get the building plans passed within a period of six months and would complete the construction within a period of two years. The petitioner could not present the plans or even initiate the construction for number of years. He applied for approval of the plan on 28.9.84 upon which the Collector, initiated proceedings for confiscation of the land in question and show cause notice dated 11.4.85 was issued. Turning down the pleas raised by the petitioner in his reply dated 2.5.85, the Collector passed the impugned order on 31.7.86 cancelling the grant of land and resuming the possession thereof by the Government. The petitioner

approached the Secretary by filing a revision application which also came to be rejected by the order dated 10/13.2.89. The petitioner has therefore filed the present petition challenging the said orders.

3. Learned advocate Shri Patel appearing for the petitioner submitted that the petitioner had made out genuine grounds for condonation of delay. He submitted that the authorities below ought to have exercised discretion in favour of the petitioner and ignored the delay which was well explained by the petitioner. He further submitted that the Collector as well as the Additional Chief Secretary in the respective impugned orders observed that the petitioner could have applied for extension of time. He submitted that if extension could have been granted upon an independent application by the petitioner, the same could also have been considered by the authorities while considering the defence of the petitioner since the petitioner had made out good grounds explaining why he could not develop the land within the time permitted. He submitted that there were genuine difficulties such as non-availability of cement and finance; that the possession of the land was handed over after a delay of one year and that the Municipal Authorities also consumed

substantial time in passing the plans presented by the petitioner. He further submitted that the objections raised by the authorities with respect to prohibition of construction within 700 meters of Bhujia Fort was neither part of the show cause notice nor is the same substantiated by any material on record. He submitted that the Government itself to other similarly situated land holders granted permission for development of land.

4. It is not necessary to go into the above aspects of the matter as well as the contentions raised by the learned AGP in support of the orders since the learned advocate Shri Patel, after some discussion at the Bar submitted that the petitioner would be willing to apply to the State Government for the grant of the land even on payment of presently prevailing market rate.

5. In view of the above submission, without dealing with the rival contentions, it is observed that it would be open for the petitioner to apply to the Authorities for grant of the same land even on payment of presently prevailing market rate and if the petitioner so applies within a period of four weeks from today, such an application will be decided expeditiously in accordance with law and prevailing Government policy unmindful of

the impugned orders. I am sure the Authorities will bear in mind that the petitioner was earlier alloted this land for which he had paid full market price prevailing at the relevant time and if he undertakes before the Government to utilize the land without any delay, his application will receive sympathetic consideration. Until such time that his application is decided the present status of the land will continue.

6. In view of the above observations and directions, the petition stands disposed of. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)